IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10922 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALLIULLA INAYATKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR KG SHETH AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/04/2001

ORAL JUDGEMENT

1. The petitioner abovenamed has preferred this petition under Article 226 of the Constitution of India challenging the order of his detention passed by the

Commissioner of Police, Surat city - respondent no. 2 herein on 23.9.2000 in case No. : PCB/ PASA/ 92/2000 on the ground that the petitioner abovenamed was found to be a bootlegger and therefore, he was required to be detained in exercise of the powers conferred by Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "PASA").

2. The petitioner has challenged the aforesaid order of his detention mainly on the ground of non application of mind and also on the ground of non furnishing the required information and documents to the petitioner. The petitioner has therefore, prayed that on the aforesaid grounds, the order of detention is found to be illegal and therefore, it may be quashed and set aside and the petitioner may be set at liberty forthwith.

3. On receiving the petition, Rule was issued and Mr. K.G. Sheth, learned AGP appears on behalf of the respondents and waives service of Rule. I have heard Mr. Nimish M. Kapadia, learned advocate for the petitioner and Mr. K.G. Sheth, learned AGP for respondents.

4. Learned advocate for the petitioner has argued at length that though, the Detaining Authority has passed an order of detention on the petitioner on 23/9/2000, it has been mentioned therein that the petitioner is a bootlegger in as much as offences under Indian Penal Code have been registered against the petitioner in the year 2000 AD and the petitioner was involved in the said offences including the offences under Indian Penal Code.

5. It has been stated that as per para 1 of the grounds of detention - internal page 2, it has been stated that the offence was registered against the petitioner being CR. No. 5235/2000 under the provisions of Section 66(B), 65(E) and 81 of the Bombay Prohibition Act on 18.8.2000. On going through the grounds for detention mentioned in the said order, it is noticed that no other offence has shown to have been registered against the detenu - petitioner. This shows that the petitioner was involved in a case under Bombay Prohibition Act.

6. So, on one hand, the petitioner has been branded as Bootlegger on the ground that a criminal offence under Indian Penal Code has been registered against him and on the other hand detail given in the order at page No. 26 goes to show that the offence registered against the petitioner was under the Bombay Prohibition Act and not

under the Indian Penal Code. This shows that the Detaining Authority had not applied his mind properly to the evidence and material before him. When the order has been passed for the detention of the detenu without application of mind, then such an order cannot be sustained for any moment. On the other hand, though the Detaining Authority has mentioned in his order that the petitioner was involved in an offence under Indian Penal Code, the materials with respect to that offence have not been supplied to the petitioner. In that view of the matter, the petitioner was not in a position to make effective representation against his detention and therefore, the constitutional right guaranteed under Article 22(5) of the Constitution of India has been clearly violated.

7. In that view of the matter, the order passed by respondent no. 2, detaining the petitioner cannot be upheld and the further detention of the petitioner cannot be sustained in the eye of law.

8 . For the reasons stated above, it is amply clear that the order of detention suffers from the non application of mind and non supply of the documents and therefore the present petition is required to be allowed and the order of detention against the petitioner is required to be set aside. In view of above, other points have not been presses into services.

9. For the fore going reasons, this petition is allowed. The impugned order dated 23/9/2000 passed by the Commissioner of Police, Surat City is quashed and set aside. The detenu shall be released forthwith if not required in any other cases. Rule is made absolute accordingly. Direct Service Permitted.

10. At this stage, learned advocate for the petitioner makes a statement that the petitioner was originally detained at Bhuj Special Jail but on account of earthquake, the detenu has been shifted to the Central Prison, Sabarmati at Ahmedabad and therefore, copy of writ may also be sent to the Jail Authorities of Central Prison, Sabarmati at Ahmedabad. The office shall send a copy of writ to the jail authority concerned i.e. at Bhuj as well as Jail Superintendent, Central Prison, Sabarmati, Ahmedabad.

(D.P. Buch, J.)

pallav